

1 Michael Lee Hertzberg  
740 Broadway @ Astor, 5th Floor  
2 New York, NY 10003-9518  
(212) 674-4614

3 Andrew H. Wilson, SBN #063209  
4 WILSON, RYAN & CAMPILONGO  
115 Sansome St., 4th Floor  
5 San Francisco, California 94104  
(415) 391-3900  
6 Telefax: (415) 954-0938

7 Laurie J. Bartilson, SBN #139220  
BOWLES & MOXON  
8 6255 Sunset Boulevard, Suite 2000  
Hollywood, CA 90028  
9 (213) 463-4395  
10 Telefax: (213) 953-3351

11 Attorneys for Plaintiff CHURCH OF SCIENTOLOGY  
INTERNATIONAL

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF MARIN

14 CHURCH OF SCIENTOLOGY )  
INTERNATIONAL, a California not- )  
15 for-profit religious corporation; )

16 Plaintiffs, )

17 vs. )

18 GERALD ARMSTRONG; MICHAEL WALTON; )  
et al., )

19 Defendants. )

20 CHURCH OF SCIENTOLOGY )  
INTERNATIONAL, a California not- )  
21 for-profit religious corporation; )

22 Plaintiffs, )

23 vs. )

24 GERALD ARMSTRONG; THE GERALD )  
25 ARMSTRONG CORPORATION, a )  
California corporation; Does 1 - )  
26 25 INCLUSIVE )

27 Defendants. )  
28

**FILED**

DEC 8 1994

HOWARD HANSON  
MARIN COUNTY CLERK  
BY J. STEELE

**RECEIVED**

**DEC 08 1994**

**HUB LAW OFFICES**

CASE NO. 157 680

[AND LASC NO. BC 052395]

**CONSOLIDATED**

CHURCH OF SCIENTOLOGY  
INTERNATIONAL'S OPPOSITION  
TO ARMSTRONG'S EX PARTE  
APPLICATION TO CONTINUE  
HEARING ON PLAINTIFF'S  
MOTION FOR SUMMARY  
ADJUDICATION

DATE: December 8, 1994

TIME: 9:30 a.m.

DEPT: 1

TRIAL DATE: May 18, 1994

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I. INTRODUCTION

With this application, defendant Gerald Armstrong a seeks two-month continuance of a motion that has been on file for a year and a half, claiming that he had insufficient time to respond. Ignoring plaintiff's reasonable offer to stipulate to a brief continuance of the hearing on plaintiff's motion for summary adjudication. Armstrong comes to this Court one day before his opposition to the motion is due, and seeks a delay of more than two months. [Declaration of Laurie J. Bartilson, ¶ 2, and Exhibits A, B and C thereto.] Plaintiff opposes any significant further delay of these proceedings. Armstrong has already delayed hearing on this motion by more than 20 months by:

\* Obtaining a stay of proceedings in the breach action one day before his opposition to the motion was due to be in filed, in March, 1993; [Declaration of Laurie J. Bartilson, ¶ 3]

\* Agreeing to transfer the Breach case to Marin so that the cases could be tried together only if the motion, then set for hearing on August 31, 1994, was also reset in Marin; [Id., ¶ 5] and

\* Refusing to cooperate in completing the transfer of the files to Marin so that plaintiff could promptly re-set its motion for hearing [Id., ¶ 6].

In the 20 intervening months, the theories of recovery and legal arguments advanced by plaintiff have not changed. Indeed, the only real change in the motion, besides in the caption, is that plaintiff is seeking summary adjudication of only three causes of action, instead of six. Armstrong and his counsel have



1 had more than a year to oppose the motion for summary  
2 adjudication. No further significant delay should be permitted.

3 **II. ARMSTRONG HAS SHOWN NO GOOD CAUSE FOR EX PARTE RELIEF**

4 In order to obtain ex parte relief from this Court,  
5 Armstrong must demonstrate that there is "good cause" to grant  
6 him the relief which he seeks. Marin County Superior Court Rule  
7 2.10(a). As of this writing, Armstrong has not informed  
8 plaintiff of his reasons for desiring the continuance beyond the  
9 fact that one of his two lawyers is presently in trial.

10 Plaintiff assumes that his request for continuance is based on  
11 two arguments: one, that Ford Greene is in trial and two, that  
12 he needs to depose Michael Flynn. Neither of these arguments  
13 constitutes good cause for a lengthy continuance: Mr. Greene has  
14 competent co-counsel, Paul Morantz, and **Mr. Greene's trial is not**  
15 **in session on the day presently scheduled for hearing.** Further,  
16 Armstrong has had nearly three years in which to depose Flynn,  
17 and the issue concerning which he claims to need the deposition  
18 **has already been decided in plaintiff's favor** by the Court of  
19 Appeal and the Los Angeles Superior Court, and is law of the  
20 case. Indeed, the extent of the continuance which Armstrong  
21 seeks demonstrates his bad faith desire for delay. Mr. Greene's  
22 trial is scheduled to end completely by February 1. Nonetheless,  
23 he asks this Court to delay the hearing on plaintiff's motion  
24 until February 24.

25 **A. Mr. Greene Is Available On December 23, And Is Not**  
26 **Armstrong's Only Lawyer**

27 Armstrong's attorney, Ford Greene, has been requesting that  
28 plaintiff delay discovery and other matters in this action for



1 more than two months because of a claimed pending trial in the  
2 case of Simon v. Chakpori Ling Foundation. [Bartilson Dec., ¶ 7,  
3 Exhibit D thereto.] Plaintiff accommodated Mr. Greene, and kept  
4 his calendar clear during the entire month of November, the month  
5 during which Mr. Greene had informed plaintiff's counsel he would  
6 be in trial. [Id.] Although Mr. Greene was not in trial during  
7 November, and apparently **was** available to conduct discovery and  
8 other matters during that time period, he did not so inform  
9 plaintiff's counsel. [Id.] Now, Mr. Greene insists that  
10 plaintiff and this court should accommodate him because his trial  
11 has started.

12 In fact, such a delay is completely unnecessary. The clerk  
13 for Department 7 of Sonoma County Superior Court (where the Simon  
14 trial is pending) has informed plaintiff's counsel that the trial  
15 will not be in session on December 22, 23, and the entire week of  
16 December 26, 1994. [Id., ¶ 8.] The summary adjudication motion  
17 is presently set for hearing on December 23. Mr. Greene, then,  
18 is available on the date that he wishes to continue.

19 Moreover, Mr. Greene is not Armstrong's only attorney. Mr.  
20 Greene's co-counsel, Mr. Morantz, has represented Armstrong in  
21 this case since April 18, 1992. Mr. Morantz is extremely  
22 knowledgeable concerning the matters at issue in the summary  
23 adjudication motion: he has joined Mr. Greene on the papers in  
24 this case for almost three years; he wrote some or all of the  
25 briefs for the Court of Appeal on the issue of the validity of  
26 the contract in question; he appeared numerous times on  
27 Armstrong's behalf in motion practice before the Superior Court,  
28 including on demurrers and other significant motions; and he



1 argued, with Mr. Greene, Armstrong's appeal to the 1st District.  
2 [Id., ¶ 9.] There is no reason why Mr. Morantz cannot assist Mr.  
3 Greene in preparing an opposition to plaintiff's motion, and no  
4 reason why he could not appear at any hearing.

5 **B. Armstrong Has No Need To Depose Flynn**

6 Michael Flynn was Armstrong's attorney at the time Armstrong  
7 signed the contract at issue in this case. Armstrong contends  
8 that Flynn "coerced" him, at plaintiff's behest, into signing the  
9 contract. He made this identical argument to the Court of Appeal  
10 earlier this year. The Court of Appeal upheld Judge Sohigian's  
11 finding that "Armstrong voluntarily entered the settlement  
12 agreement for which he received substantial compensation. . . ."  
13 [Bartilson Dec., ¶ 10 and Ex. E thereto, pp. 6, 11.] Armstrong  
14 repeated the argument to the Los Angeles Superior Court in  
15 opposing plaintiff's motion for summary judgment of his cross-  
16 claim. In granting plaintiff's motion, the Court said, "The  
17 Agreement terms are clear and unambiguous. [Armstrong]  
18 understood the terms and signed it. The duties and obligations  
19 of the Agreement are clearly stated. 'Mutuality' and  
20 'reciprocal' duties cannot be read into the unambiguous terms of  
21 the Agreement." [Bartilson Dec., ¶ 11 and Exhibit F thereto, p.  
22 1.]

23 Now, Armstrong contends that he must take Flynn's deposition  
24 on "the issue of whether or not my client consented to the  
25 signing of the settlement contract" in order to oppose  
26 plaintiff's motion. [Bartilson Dec., ¶ 12 and Exhibit G thereto.]  
27 That issue has already been decided. Moreover, if Armstrong  
28 believed that he needed this discovery, he has no excuse for not



1 taking it sooner. The case was filed in February, 1992, and the  
2 summary adjudication motion has been pending for 20 months.  
3 Indeed, in May 1992, plaintiff tried to take Mr. Flynn's  
4 deposition. Mssrs. Greene and Morantz, by ex parte application,  
5 successfully prevented that deposition from going forward. [Id.,  
6 ¶ 13, and Exhibit H thereto.]

7 **III. PLAINTIFF WILL BE PREJUDICED BY FURTHER DELAY IN THE**  
8 **HEARING OF ITS MOTION FOR SUMMARY ADJUDICATION**

9 As demonstrated above, plaintiff has been seeking a hearing  
10 on its motion since March, 1993. The motion is potentially  
11 dispositive of three of the claims in plaintiff's complaint.  
12 Additional delay in the hearing of the motion compounds that cost  
13 to all concerned, reduces plaintiff's potential recovery, and  
14 prolongs these proceedings unnecessarily. With a May trial date,  
15 delaying hearing on the motion until the end of February reduces  
16 plaintiff's opportunities to complete discovery and bring further  
17 dispositive motions in a timely fashion.

18 Plaintiff has always been amenable to a brief delay, if  
19 necessary to accommodate Mr. Greene. His late request for a two-  
20 month delay is, however, outrageous, and highly prejudicial to  
21 plaintiff.

22 **IV. CONCLUSION**

23 Armstrong's request for a lengthy continuance is meritless,  
24 and sought only to delay the ultimate resolution of this case.  
25 Armstrong's attorneys have already had plaintiff's arguments  
26 before them for more than 20 months. While one of Armstrong's  
27 attorneys is presently in trial, Armstrong has a second attorney  
28 who is not. Armstrong's claimed need for a deposition is a sham.

1 Under these circumstances, Armstrong's application should be  
2 denied.

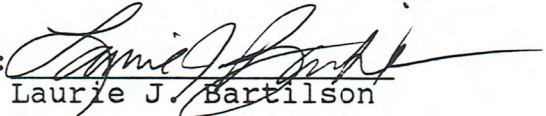
3 DATED: December 8, 1994

Respectfully submitted,

4 Michael Lee Hertzberg

5 Andrew H. Wilson  
6 WILSON, RYAN & CAMPILONGO

7 BOWLES & MOXON

8 By:   
9 Laurie J. Bartilson

10 Attorneys for Plaintiff  
11 CHURCH OF SCIENTOLOGY  
12 INTERNATIONAL

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28